The Marital Rape Exception under Section 63 of the Bharatiya Nyaya Sanhita: A Constitutional and Human Rights Challenge

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ABSTRACT

Marital rape has become one of the most urgent debates on Indian criminal law. Traditionally, the Indian Penal Code, 1860 (IPC) recognized rape as an offense but reserved Exception 2 to Section 375 exempting forced sex by a husband with his wife, on condition that she was over fifteen years old. This colonial period doctrine was based on the English common law fiction of "implied consent" and patriarchal ideology that marriage granted an irrevocable license of sexual access to the husband. Despite the passage of the Bharatiya Nyaya Sanhita, 2023 (BNS), Section 63 still maintains this exception with a higher threshold of eighteen years, thus leaving the physical autonomy of adult married women legally unguarded.

This article critically analyzes the exception of marital rape under Section 63 of the BNS on constitutional, socio-legal, and comparative fronts. It traces the evolution of the doctrine historically, its profound roots in patriarchal constructions of marriage, and its survival even in the wake of progressive constitutional precedent on equality, dignity, and privacy. Referring to judicial developments like Independent Thought v. Union of India (2017) , Nimeshbhai Bharatbhai Desai v. State of Gujarat (2018) , and the fractured verdict in RIT Foundation v. Union of India (2022) , the argument of the paper is that the exception does not pass constitutional scrutiny under Articles 14, 15, and 21.

Additionally, the research involves India's international obligations under treaties like Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and International Covenant on Civil and Political Rights (ICCPR), as well as comparative law from countries like the United Kingdom, Canada, South Africa, Nepal, and Bhutan where marital rape is clearly criminalized. It further emphasizes the mental and social impacts of marital rape and the insufficiency of available civil relief under the Domestic Violence Act, 2005.

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Finally, the paper submits that preserving the marital rape exception solidifies gender inequality and subverts constitutional morality. It urges repealing Exception 2 to Section 63 of the BNS, bringing in express criminalization, and establishing strong safeguards to weigh concerns of abuse against the need to grant women bodily autonomy and dignity.

INTRODUCTION

The criminalization of marital rape is one of the most controversial, contentious, and neglected topics in Indian criminal law. Indian jurisprudence has struggled for generations with the basic question: can there be a presumed consent within marriage, and if there can, does marriage end a woman's right over her own body? Although most jurisdictions worldwide have unequivocally answered this in the negative, India continues to retain a colonial-era exception that withdraws married women from equal protection against sexual assault.

Rape under the Indian Penal Code, 1860 (IPC) was defined in Section 375, but Exception 2 was that "sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape".[541] This essentially granted immunity to husbands, legalizing forced sexual intercourse in marriage. The law thus placed a married woman in a different category than an unmarried woman, ignoring her agency and autonomy, and reinforcing the patriarchal belief that marriage signifies irrevocable consent.

The Bharatiya Nyaya Sanhita, 2023 (BNS), brought as part of the Indian government's broader exercise to reform colonial-era criminal laws, was welcomed as a move towards modernization and conformity with constitutional values. Nonetheless, contrary to projections, the BNS maintained the marital rape exception within Section 63 by merely increasing the age of consent from fifteen to eighteen years.[542] This implies that whereas intercourse with a wife under the age of eighteen constitutes statutory rape, non-consensual intercourse with an adult wife over the age of eighteen still falls outside the offencive jurisdiction. The persistence of this exception serves to highlight the Indian state's unwillingness to challenge deeply ingrained cultural and religious attitudes towards marriage.

Problem Statement

[541] Indian Penal Code, 1860, § 375, Exception 2, No. 45, Acts of Parliament, 1860 (India).
[542] Indian Penal Code, 1860, § 63, No. 45, Acts of Parliament, 1860 (India).

The persistence of the marital rape exception is a serious contradiction. Constitutional jurisprudence and international human rights law in one way are more focused now on bodily autonomy, dignity, and gender equality. But on the other side, statutory law continues to exclude married women from these protections. The contradiction is even stronger if one bears in mind that the same act, when committed by any other, would be considered as rape if committed on an unmarried woman; but if done by the husband, it's not.

Importance of the Issue

1.Human Rights Aspect: Marital rape is a breach of basic human rights such as the right to equality, privacy, and freedom from inhuman treatment. The continuation of the exception by India goes against its treaty obligations like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).[543]

2.Constitutional Dimension: The Constitutional Articles 14, 15, and 21 provide for equality, non-discrimination, and the right to life with dignity. The Supreme Court, in its judgments like Justice K.S. Puttaswamy v. Union of India (2017)[544], has established bodily autonomy and privacy as Constitutional rights. The marital rape exception impinges directly on these guarantees.

3. Social Dimension: A high percentage of women have experienced spousal sexual violence according to the National Family Health Survey (NFHS-5).[545] However, because of the legal protection provided to husbands, these women find themselves with little effective recourse in criminal law.

4. Comparative Dimension: Marital rape is criminalized in more than 70 nations, including the United Kingdom, Canada, South Africa, Nepal, and Bhutan. India is an exception among large democracies.

Objectives of the Study

This article attempts to answer the following salient objectives:

•To follow the historical and jurisprudential roots of the exception of marital rape in Indian law.

•To comment upon Section 63 of the BNS and its continuity from Section 375 IPC.

[543] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

[544] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

[545] MINISTRY OF HEALTH & FAMILY WELFARE, NATIONAL FAMILY HEALTH SURVEY (NFHS-5), 2019–21 (2021).

•To check the constitutionality of the exception under Articles 14, 15, and 21.

•To analyze judicial pronouncements and law commission reports on the issue of marital rape.

•To examine India's international obligations and comparative legal systems.

• To suggest reforms for criminalizing marital rape in a manner that addresses legitimate concerns of abuse.

Methodology

The paper employs a doctrinal and analytical approach, relying on:

• Primary sources of statutes (IPC, BNS, Domestic Violence Act), constitutional guarantees, and judicial pronouncements.

• Secondary sources of Law Commission reports, the Justice Verma Committee report, and academic scholarship.

• Comparative examination of international jurisprudence and treaty commitments.

• Quantitative data from NFHS-4 and NFHS-5 interviews bringing out prevalence of sexual violence by spouse.

Scope and Limitations

The article is centered on the marital rape exception in Section 63 of the BNS in India. Although it mentions issues of gender violence and domestic violence more broadly, its core focus is the legal immunity of husbands for forced sex with wives. It does not try to carry out a comprehensive criminological or psychological analysis but places the question in constitutional, legal, and policy contexts.

HISTORICAL & JURISPRUDENTIAL ROOTS OF THE MARITAL RAPE EXCEPTION

The marital rape exception in Indian law cannot be considered in isolation since it is the result of centuries of patriarchal legal thinking reinforced by English common law, native religious traditions, and colonial codification. Its survival indicates the persistent conflict between archaic societal morality and the demands of constitutional morality. The origin of this exception is in the English law of common law, where in 1736 Sir Matthew Hale stated that a husband could not be guilty of raping his lawful wife, for marriage was irrevocable consent. This implied consent doctrine, supported by coverture, essentially incorporated a wife's legal identity into her husband, making her incapable of claiming control over her own body. When

the Indian Penal Code of 1860 was created by Lord Macaulay, it took on this assumption, explicitly excusing husbands for marital rape.

The exception was then further justified by strongly ingrained patriarchal norms in India itself. Ancient Hindu scriptures like the Manusmriti placed a woman's responsibility on obeying her husband, with no room for sexual independence, and epics like the Mahabharata treated women as commodities, as when Draupadi is gambled away in a game of dice. Medieval customs like purdah and child marriage extended the subordination of women, producing a cultural climate in which marital rape was institutionalized as an aspect of marriage, not as a transgression of bodily integrity. The codification within the IPC, especially Section 375 and its Exception 2, was an expression of these assumptions where marriage consent was viewed as unchangeable and male dominance over female sexuality was given precedence. The fifteenth age bar only reiterated the colonial state's disregard for women's sexual agency.

In the late nineteenth and twentieth centuries, feminist criticism started questioning the immunity of marital rape. Across the world, England overruled the doctrine of implied consent in R v. R (1991)[546], discarding centuries-old presumptions of irrevocable marital consent and setting an impact on the world over, including India. Post-independence Indian women's movements more and more brought the issue to the fore, but legislative change remained stalled because of political reluctance and resistance in society. Post-independence, the constitutional order guaranteed equality and dignity, but the exception persisted. The 42nd Law Commission Report of 1971 suggested a limited reform excluding judicially separated spouses, which was later enacted as Section 376B of the IPC in 2013.[547] The 172nd Law Commission Report in 2000 had even weighed criminalization but discarded it due to concerns over destabilizing marriage, illustrating how societal morality still shaped legal policy.[548] The Justice Verma Committee, after the Nirbhaya case in 2013, categorically advised criminalization of marital rape as an anachronistic and unconstitutional clause[549]; however, Parliament maintained the exception in the Criminal Law (Amendment) Act, 2013.

[546] R v. R, [1991] 1 All E.survey
[547] LAW COMMISSION OF INDIA, 42ND REPORT ON THE INDIAN PENAL CODE (1971).
[548] LAW COMMISSION OF INDIA, 172ND REPORT ON REVIEW OF RAPE LAWS (2000).
[549] JUSTICE J.S. VERMA COMMISSION, REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW (2013).

The Bharatiya Nyaya Sanhita, 2023, as a decolonized criminal code, continued this legacy. Section 63 increased the age bar to eighteen, criminalizing forced sex with wives under the age of eighteen but not with adult married women. This difference is based not on consent but simply on age, and it continues the colonial and patriarchal systems. Globally, India is an exception. Marital rape is criminalized in nations like the United Kingdom, Canada, South Africa, Nepal, Bhutan, and every U.S. state, focusing on equality, autonomy, and dignity. All European and Latin American countries also approach marital rape as similar to other sexual assaults.

The persistence of the marital rape exception also testifies to the uneasy coexistence of two conflicting legal narratives in India: constitutional jurisprudence increasingly upholds women's rights to equality, privacy, and dignity, but statutory criminal law still refuses to recognize married women's protection from sexual violence. The exception is a hybrid outcome of colonial imposition, religious patriarchal doctrine, and legislative inertia. For the modern-day India, the challenge is to move beyond this colonial heritage and bring criminal law in line with constitutional morality as well as international human rights norms so that all women have the protection, autonomy, and dignity.

MARITAL RAPE IN INDIAN CONTEXT: IPC TO BNS

The path of marital rape legislation in India is one of intense tension between colonial heritages, patriarchal deep roots, and gender justice demands. While the Indian Penal Code of 1860 cemented the marital rape exception, the Bharatiya Nyaya Sanhita of 2023, presented as a modernized code, has retained the exception to a great extent. The statutory provisions, limited reforms, and the current challenges collectively uncover how deeply rooted this phenomenon is.

Section 375 of the IPC had defined rape, but Exception 2 specifically excluded a husband from the ambit of the law by stating that “sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.” This exception had two harsh implications. First, it gave marriage itself immunity, so that if married, a woman could not lawfully accuse her husband of rape. Second, it acquiesced to child marriage by permitting sexual intercourse with a wife over fifteen years old, despite the statutory marriage age being more. The combined result was that adult women had no redress against forced sex in marriage

and even adolescent girls over fifteen were excluded. Feminist criticisms and human rights activism gradually dismantled this exception over time through piecemeal reforms. The 42nd Law Commission Report of 1971 recommended eliminating immunity in judicially separated spouses' cases, which prompted the enactment of Section 376B IPC, criminalizing intercourse with a separated wife without consent.[550] The 172nd Law Commission Report of 2000, however, abandoned wider criminalization on the ground that it would destabilize the "institution of marriage" and was based on the prevalence of societal morality over constitutional morality.[551] The Justice Verma Committee Report of 2013, drawn up in the wake of the Nirbhaya case, actually called for criminalization, discounting the idea of implied consent within marriage and highlighting that unequal treatment of wives contravened constitutional equality.[552] However, the Criminal Law (Amendment) Act of 2013 neglected to comply with this, demonstrating the continuing reluctance of the legislature.

Courts, however, started to erode the exception, albeit hesitantly. In Independent Thought v. Union of India (2017)[553], the Supreme Court held that sexual intercourse with a wife below the age of eighteen years constituted rape, interpreting down the age barrier in the IPC from fifteen to eighteen years. The Court had recourse to child rights and constitutional protection but refrained from deciding on adult marital rape. In Nimeshbhai Bharatbhai Desai v. State of Gujarat (2018), the Gujarat High Court vehemently condemned marital rape as a "disgraceful offence" that offended dignity, but did not strike down the exception, leaving it to Parliament. The divided verdict of the Delhi High Court in RIT Foundation v. Union of India (2022) expressed judicial unease: Justice Shakdher declared the exception unconstitutional, insisting that marriage cannot mean irrevocable consent, whereas Justice Hari Shankar maintained it, alluding to social reasons. The case now waits for the Supreme Court to decide. These judgments collectively express a judicial appreciation of the issue but reluctance to directly address it without parliamentary support.

The BNS, introduced to replace the IPC and heralded as a project of "decolonization," has disappointed reform advocates. Section 63 recasts rape but keeps marital immunity by declaring that "sexual intercourse or sexual acts by a man with his own wife, the wife not being

[550] LAW COMMISSION OF INDIA, 42ND REPORT ON THE INDIAN PENAL CODE (1971).
[551] LAW COMMISSION OF INDIA, 172ND REPORT ON REVIEW OF RAPE LAWS (2000).
[552] JUSTICE J.S. VERMA COMMISSION, REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW (2013).
[553] Independent Thought v. Union of India, (2017) 10 SCC 800.

under eighteen years of age, is not rape." The only modification was increasing the threshold to eighteen years, as with the age of consent. The principle is intact, however: adult wedded women remain unprotected, and the assumption of irrevocable consent remains in force. This veneer of reform emphasizes continuity over change, reinforcing gender inequality in place of eradicating colonial patriarchy.

The BNS is riddled with contradictions. A husband may be culpable of raping his seventeen-year-old wife but not his nineteen-year-old wife, a random distinction tied to age in lieu of consent. The same non-consensual act is rape outside marriage but not within it, denying married women equal protection under Article 14. Constitutional jurisprudence, especially in Puttaswamy (2017)[554] and Navtej Johar (2018)[555], has emphasized autonomy, privacy, and dignity, yet the BNS exception contradicts these principles. At the international level, India's perpetuation of marital rape immunity is an embarrassment since it is among the few democracies to continue practicing this colonial legacy in spite of being a signatory to both CEDAW and ICCPR[556].

Empirical evidence also supports that marital rape is not a theoretical issue but a lived experience. The National Family Health Survey (NFHS-4, 2016) reported that 5.4% of married women indicated being physically forced to have sexual intercourse by their husbands, and 6.9% of them experienced it “often or sometimes”.[557] NFHS-5 (2021) indicated that about 6% of men agreed that husbands were justified in forcing sex on their wives, while about 20% justified punishing wives for denying sex.[558] These statistics are probably lower than actual because of underreporting, stigma, and absence of legal remedy, but they identify the frequency of sexual violence by husbands.

Current arguments regarding policy still reflect the gap between societal and constitutional morality. They argue that the criminalization of spousal sexual violence risks misuse, destabilizing marriage, and conflicts with cultural values that approach marriage as sacrament. Supporters argue back that there are safeguards against abuse in other offenses, that civil relief

[554] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
[555] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
[556] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.
[557] MINISTRY OF HEALTH & FAMILY WELFARE, NATIONAL FAMILY HEALTH SURVEY (NFHS-4), 2015–16 (2017).
[558] MINISTRY OF HEALTH & FAMILY WELFARE, NATIONAL FAMILY HEALTH SURVEY (NFHS-5), 2019–21 (2021).

like the Domestic Violence Act, 2005, cannot take the place of criminal punishment in rape, and that marriage must not be a license to violence. Courts have time and again stressed the importance of placing constitutional morality first, yet legislative inertia continues.

The Indian scenario hence represents a paradox. Whereas constitutional jurisprudence and feminist scholarship ask for recognition of marital rape as a violation of equality, dignity, and autonomy, statutory law under both IPC and BNS remains silent on exempting husbands. The exemption by BNS reinforces the emptiness of talk of "decolonization," for one of the most colonial and patriarchal provisions has gone unchallenged. The continuation of this exception is not just a technical anomaly in the law, it is systemic denial of dignity and equality to half of humanity. Unless reversed, it will keep undermining India's constitutional commitments and international obligations.

CONSTITUTIONAL EXAMINATION OF THE MARITAL RAPE EXCEPTION

The Indian Constitution ensures equality, non-discrimination, and the right to life with dignity, but the marital rape exception provided by Section 63 of the Bharatiya Nyaya Sanhita (BNS) goes against these safeguards. According to Article 14, the exception doesn't meet the test of reasonable classification, as it distinguishes between married and unmarried women on grounds of marital status instead of consent, which is the essence of the offence. Judicial precedents like State of West Bengal v. Anwar Ali Sarkar[559], Navtej Johar v. Union of India[560], and Independent Thought v. Union of India[561] reinforce that categories based on stereotypes or dignity-violative are unconstitutional, and hence the exception is untenable. Article 15 prohibits discrimination based on sex, but the exception gives immunity to husbands and refuses protection to married women, perpetuating the patriarchal concept of continuous consent. Judicial bodies have repeatedly set aside gender-stereotyped legislation, such as in C.B. Muthamma v. Union of India[562] and Anuj Garg v. Hotel Association of India[563], affirming that the exception contravenes Article 15.

[559] State of W.B. v. Anwar Ali Sarkar, AIR 1952 SC 75.
[560] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
[561] Independent Thought v. Union of India, (2017) 10 SCC 800.
[562] C.B. Muthamma v. Union of India, (1979) 4 SCC 260.
[563] Anuj Garg v. Hotel Ass'n of India, (2008) 3 SCC 1.

Article 21, covering dignity, autonomy, privacy, and bodily integrity, is also eroded. Decisions such as Suchita Srivastava v. Chandigarh Administration[564], Puttaswamy v. Union of India[565], and Francis Coralie Mullin v. Union Territory of Delhi[566] declare sexual and decisional autonomy as essential to life and liberty. By presuming marriage prevails over consent, Section 63 erases these rights and treats women as property in marriage. The exception also conflicts with constitutional morality, which values individual dignity above conventions of society, as reiterated in Navtej Johar and Joseph Shine v. Union of India[567]. Although constitutional inconsistency is apparently clear, courts have frequently avoided interfering with the will of Parliament, as seen in the divided verdict in RIT Foundation v. Union of India, leaving it to the Supreme Court for final judgment.

Law Commission reports and committee proposals also show such reluctance. While the 42nd and 172nd Reports had shied away from criminalization, the Justice Verma Committee in 2013 categorically suggested revoking the exception, refuting patriarchal concerns regarding the stability of family. Parliament, however, kept the exception in the 2013 amendment intact, upholding social morality at the expense of constitutional assurances. Globally, India has been repeatedly criticized by CEDAW, UN Special Rapporteurs, and human rights groups for its inability to safeguard married women, demonstrating its isolation in the international arena. Civil society and feminist jurisprudence have repeatedly challenged the exception, turning it into a constitutional abuse denying sexual autonomy and legalizing violence.

Throughout reports, judgments, and debates, there are evident patterns: identification of the injustice within the exception, judicial and legislative hesitancy to decisively act, and ongoing deviation from international standards. The marital rape exception infringes Articles 14, 15, and 21, withholding equality, autonomy, and dignity to wives. Its prevalence demonstrates the disparity between constitutional theory and legal practice. With this issue now before the Supreme Court, final reform is necessary to ensure constitutional morality, safeguard women's rights, and bring Indian law into conformity with the principles of equality and justice.

[564] Suchita Srivastava v. Chandigarh Admin., (2009) 9 SCC 1.
[565] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
[566] Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 SCC 608.
[567] Joseph Shine v. Union of India, (2019) 3 SCC 39.

COMPARATIVE ANALYSIS AND INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

India's denial to criminalize marital rape cannot be understood as a country that stands in splendid isolation to its international obligations. As a party to a number of human rights conventions, India is obligated to adhere to principles of equality, dignity, and autonomy in the body. By ratifying CEDAW in 1993, it committed itself to ending discriminatory laws, and the CEDAW Committee has consistently condemned India for continuing to uphold the marital rape exception. Equivalent obligations follow from the ICCPR, which forbad cruel and degrading treatment under Article 7 and provided for equality before the law under Article 26, and from the UDHR[568] and ICESCR[569], which both guaranteed rights to liberty, security, health, and well-being. Both the Beijing Platform for Action and the Sustainable Development Goals also stress the eradication of violence against women, leaving little question that India is out of line with its international commitments.

The majority of countries in the rest of the world have left the marital rape exception behind, so India's position stands as an anomaly. In the country of origin of the doctrine of irrevocable consent, the United Kingdom, the House of Lords in R v. R (1991) overturned it as outdated. In Canada, marital rape was criminalized as early as 1983, and all fifty states in the United States of America caught up by the early 1990s. South Africa repealed the exception in 2007, basing the reform on constitutional principles of equality and dignity. Closer to home, Nepal legalized marital rape in 2002 and Bhutan subsequently legalized in 2004, while Sri Lanka provides only partial acknowledgment. In the rest of Europe, Latin America, and Australia, criminalization is the rule. India, for all its democratic and constitutional ideals, persists in upholding the colonial-era dogma, even as smaller neighbors have made progress.

The exception is supported by cultural relativists who argue that Indian marriage is a sacrament and criminalizing it would destroy family life. However, cultural explanations cannot take precedence over basic rights. The Supreme Court has disapproved of such reasoning in Navtej Johar v. Union of India (2018)[570], reiterating that constitutional assurances must take precedence over religious or societal customs. Comparative experience demonstrates that

[568] Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).
[569] International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.
[570] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

criminalization has not destabilized marriage but, on the contrary, has resecured ideas of trust and equality. Fears of abuse, expressed in India as in other places, have been met elsewhere through procedural protections and judicial oversight. Where legislatures were reluctant, courts have been able to push forward with reform, as in the United Kingdom and South Africa—a route that could prove decisive in India's instance.

With the retention of the marital rape exception, India stands apart from the world's consensus and betrays its international obligations and own constitutional principles. The continued existence of this colonial vestige demeans women's dignity and equality, making India the outlier among democracies and putting off recognition of marital rape as the serious violation of human rights that it really is.

SOCIO-CULTURAL, LEGAL, AND PSYCHOLOGICAL DIMENSIONS OF MARITAL RAPE

Marital rape in India involves a multifaceted relationship of socio-cultural resistance, legal shortcomings, and severe psychological damage. Constitutional, legal, and international reasoning supports its criminalization, yet deep-rooted patriarchal stereotypes, cultural definitions of marriage, and concerns regarding abuse persistently impede reform efforts. Grasping these aspects is important to account for the continuity of the marital rape exception and the imperative legislative change.

One of the significant impediments is viewing marriage as a sacrament and not just a contract, and criminalization being opposed on the grounds that it would destabilize families. Constitutional morality, however, cannot be subject to cultural or religious norms, as confirmed in Shayara Bano v. Union of India (2017)[571]. Consent cannot be viewed as perpetually irrevocable, and international experience indicates that criminalization reinforces marital equality and not family destabilization. Misuse fears are also overstated. While false allegations can occur, criminal law already has built-in checks, and comparable doubts in dowry and domestic violence cases resulted in fine-tuning not abolition. Misuse possibilities cannot be a reason to withhold protection from actual victims, a factor emphasized by the Justice Verma Committee.

[571] Shayara Bano v. Union of India, (2017) 9 SCC 1.

Patriarchal wifely duty beliefs solidify the notion of sexual submission as a wifely duty. NFHS-5 data reveal that a majority of men, and even women, tolerate wives being forced by husbands, bringing sexual violence in marriage to a perceived obligation. Courts have dismissed such a notion of wives as property, though, such as in Joseph Shine v. Union of India (2018)[572], upholding autonomy and equality. Silence and social stigma further add to the problem. Women do not report because they fear exclusion, economic reliance, and minimization by families or institutions. Underreporting is sustained through lack of legal acknowledgment, and criminalization would symbolically recognize marital rape as violence, prompting survivors to report.

The "private sphere" hypothesis, that marital relations fall outside state intervention, has increasingly been eroded. Domestic violence and child sexual abuse, previously regarded as private, are now public issues. The Supreme Court in Vishaka v. State of Rajasthan (1997)[573] made it explicit that gender violence cannot be protected by privacy and marital rape has to be dealt with in the same manner. Political reluctance is a strong obstacle. Legislators are afraid of backlash from traditionalist constituencies and want to gain maximum popularity rather than rights. But efforts to end sati and criminalize triple talaq show that constitutional commitments have to take precedence over political expenses.

Current legal remedy is incomplete and inadequate. The Protection of Women from Domestic Violence Act, 2005 makes sexual abuse a recognized sexual violence and gives civil remedies but does not criminalize rape. Section 85 of the BNS provisions on cruelty and separation-specific legislation such as Section 86 criminalize sexual assault only in restricted situations, making arbitrary distinctions that leave cohabiting women outside of protection. Divorce laws can acknowledge marital rape as cruelty, but these are civil laws and do not punish offenders. In the absence of direct criminalization, the law sends a message that sexual autonomy within marriage is secondary to that outside of marriage.

The impact of marital rape is disastrous. Marital rape survivors experience psychological trauma, such as PTSD, depression, anxiety, and suicidal behavior, as well as physical harm, reproductive health consequences, and coerced pregnancy that erodes reproductive autonomy.

[572] Joseph Shine v. Union of India, (2019) 3 SCC 39.
[573] Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

The impact trickles outside: trust in marriage is destroyed, children who have witnessed abuse adopt negative norms, and violence is repeated. At the social level, marital rape erodes gender equality, overloads public health systems, lowers women's participation in the economy, and undermines trust in the rule of law.

Feminist legal theory underscores the importance of consent as continuous, physical autonomy non-negotiable, and marriage as a partnership, not a license to commit violence. Survivors' testimonies unlock the specific trauma of violation at the hands of a partner and the experience of being trapped afterward. Criminalization is not merely for deterrence and punishment but also for acknowledgment, empowerment, and ending intergenerational chains of violence.

The continuance of marital rape in India is based on patriarchal conventions, political reluctance, and weak juridical recourse. Alternatives such as the PWDVA, cruelty laws, and divorce laws offer limited relief but not to the fundamental violation of autonomy and dignity. Criminalization is a requirement for the vindication of constitutional values, imposition of equality, and deconstruction of entrenched pillars that normalize sexual violence in marriage. Outside of law, there must be awareness, judicial sensitization, institutional support, and policies that are survivor-focused to achieve the potential of a marriage based on consent, trust, and respect.

RECOMMENDATIONS

The continuance of the marital rape exception in Section 63 of the Bharatiya Nyaya Sanhita (BNS) attests to the necessity for reform. Constitutional assurances of dignity, equality, and autonomy cannot coexist with a law that legitimizes non-consensual sexual intercourse within marriage. While there are apprehensions regarding abuse, these cannot justify denying marital women protection under rape laws. Reform has to be holistic, balancing justice and safeguards, and grounded in constitutional morality and not concepts of outmoded societal morality.

The most pressing step is the rescinding of Exception 2 to Section 63. Marriage cannot be regarded as blanket consent for sexual intercourse. Consent needs to be clearly described as revocable, informed, and voluntary, and it should become the prime criterion for all sexual offenses. Spousal status should never lower responsibility, and punishment for marital rape

needs to be of the same level as other rapes. Meanwhile, laws have to use gender-neutral terms so that everyone is protected regardless of gender or orientation.

Judicial intervention can inject the needed momentum in the face of legislative inaction. The forthcoming marital rape challenge in the Supreme Court is an opportunity to hold the exception unconstitutional under Articles 14, 15, and 21. Even if repeal does not take place, courts can interpret current legislation progressively on the basis of declaring marital rape as cruelty in matrimonial conflicts or defining it as a violation of the fundamental right to life and dignity. After criminalization, survivor-friendly procedures in trial courts will be necessary to avert retraumatization.

Misuse concerns can be successfully addressed via procedural protections more than blanket exceptions. Judicial review at the charging stage, sanctions for false accusations, and dependence on tried evidentiary standards can deter abuse. Survivor-friendly provisions like in-camera trials, anonymity, witness protection, psychological support, and speedy hearing can make justice remain both fair as well as accessible.

Institutional support should go hand-in-hand with legal reform. Shelters, crisis centers, and helplines specifically designed for survivors of marital rape are essential, in addition to economic and housing support to break women's dependence on abusive marriages. Medical staff should be trained to identify and document cases of sexual violence in marriage in a sensitive manner, combining medical and legal assistance into an integrated response framework.

Social attitude change is equally important. Public campaigns need to counter the deep-seated belief that consent does not count in marriage. Education systems need to include gender sensitization and sex education in order to instill respect for bodily autonomy from childhood. Men and boys' programs can assist in breaking toxic masculinity and encouraging relationships grounded in respect and equality.

Reform should also synchronize criminal law with civil remedies and personal laws. Marital rape needs to be identified as both a crime and a cause for divorce so that survivors get complete relief. Personal laws should not be used to legitimize patriarchal habits that are violative of constitutional safeguards. Civil society organizations will continue to be key players in this

process, giving legal assistance, raising public awareness, and maintaining advocacy to drive reforms into the public and legislative discourse.

Finally, reforms must adopt an intersectional approach, acknowledging that women from marginalized groups, Dalit, Adivasi, rural, disabled, or LGBTQ+ spouses, face compounded barriers in accessing justice. Policies and protections must be inclusive to ensure equality in practice, not just in principle.

Lastly, criminalizing rape within marriage is really about reframing marriage itself, not as a domain of privilege, but as a union of equals based on mutual dignity. Legal reform must bring marriage in line with constitutional morality, eroding patriarchal assumptions that long deprived women of autonomy. Repealing the exception to Section 63 is not simply a matter of law, but also one of moral duty to defend justice, equality, and human rights in the most personal of human relationships.